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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2013-0079]

Khapra Beetle; New Regulated Countries and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the khapra beetle regulations by adding additional regulated articles and regulated countries. We are also updating the regulations to reflect changes in industry practices that have affected the risk of khapra beetle being imported into the United States and country names that have changed since the regulations were originally published. Finally, we are removing the list of countries where khapra beetle is known to occur from the regulations and moving it to the Plant Protection and Quarantine Web site. These actions are necessary to prevent the introduction of khapra beetle from infested countries on commodities that have been determined to be hosts for the pest, reflect current industry practices, and make it easier to make timely changes to the list of regulated countries.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to
<http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0079>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0079, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0079> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Apgar Balady, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2240.

SUPPLEMENTARY INFORMATION:

Background

The khapra beetle (Trogoderma granarium) is an insect native to India that has since become established in other countries within Africa, Asia, the Mediterranean, and the Middle East. It is a destructive pest of grain, stored products, and seeds. Infestations of khapra beetle are difficult to control because of the insect's ability to survive without food for long periods, its preference for dry conditions and low-moisture food, and its resistance to many insecticides.

The khapra beetle regulations in 7 CFR 319.75 through 319.75-9 (referred to below as the regulations) restrict the entry of certain articles, such as cucurbit seeds, used jute or burlap bags, goatskins, and chili peppers to prevent the importation of khapra beetle from countries where it is known to occur.

Regulated Articles

On July 8, 2011, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order (DA-2011-38)¹ to require a phytosanitary certificate of inspection for the entry of rice (Oryza sativa) in commercial shipments from countries where khapra beetle is known to occur. A second Federal Order (DA-2011-39) also issued on July 8, 2011, prohibited shipments of rice from those countries in passenger baggage and personal effects.

On December 14, 2011, APHIS issued another Federal Order (DA-2011-71) to expand the requirement for a phytosanitary certificate to commercial shipments of chick peas (Cicer spp.), safflower seeds (Carthamus tinctorius), and soybeans (Glycine max) from countries where khapra beetle is known to occur due to these commodities being repeatedly found to be infested with khapra beetle. Shipments of chick peas, safflower seeds, and soybeans from those countries in passenger baggage and personal effects were prohibited through a Federal Order (DA-2011-70) also issued on December 14, 2011.

We are codifying the requirements of these Federal Orders by adding rice, chick peas, safflower seeds, and soybeans to the list of regulated articles in § 319.75-2. However, because the current regulations require that all regulated articles be treated prior to entering the United States, we are amending § 319.75-2 to specify that rice, chick peas, safflower seeds, and soybeans are allowed entry into the United States if accompanied by a phytosanitary certificate

¹ http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/index.shtml#beetle.

with an additional declaration stating that the articles in the consignment were inspected and found free of khapra beetle in accordance with § 319.75-9.

We are also adding bulk, unpackaged seeds to the list of regulated articles in § 319.75-2 due to their potential for infestation by khapra beetle.

Regulated Countries

Areas of the world that are regulated for khapra beetle are listed in paragraph (b) of § 319.75-2. We have determined that khapra beetle is now present in Kuwait, Oman, Qatar, the United Arab Emirates, South Sudan, and Palestinian Authority, West Bank, none of which are currently listed as regulated countries or areas under a specific jurisdictional authority. In addition, since the regulations were last updated, some of the names of countries regulated for khapra beetle have changed. For example, Upper Volta is now known as Burkina Faso, and Sudan has split into two countries known as The Republic of Sudan and South Sudan.

Rather than amending the regulations to update the list of regulated countries in § 319.75-2(b), we are instead removing the list of regulated countries from the regulations and moving it to the Plant Protection and Quarantine (PPQ) Web site at http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/kb.pdf. Section 319.75-2(c) will detail the notice-based process by which we will add countries to the list of regulated areas. Countries will be added to the list of regulated areas when we receive official notification from the country that it is infested or when we intercept the pest in a commercial shipment from that country. Any future additions to the list of regulated areas will be conveyed through publication of a notice in the Federal Register.

Industry Practices

We are also updating the regulations for certain commodities due to changes in industry practices that have affected the risk of khapra beetle being introduced into the United States. Currently, brassware and wooden screens from Bombay, India, are listed as regulated articles in § 319.75-2(a)(2), as these commodities have traditionally been shipped in used jute or burlap bags, which are known hosts of the khapra beetle. However, industry practices have changed and brassware and wooden screens are now shipped in material that is not a host of khapra beetle. Consequently, khapra beetle is no longer being detected in shipments of brassware and wooden screens. In addition, brassware and wooden screens may be imported from other countries infested with khapra beetle, and not just from India. Therefore, we are amending the regulations to remove the specific reference to brassware and wooden screens in § 319.75-2(a)(2) as these items are already restricted when shipped in or packed with used jute or burlap bagging.

The regulations currently list goatskins, lambskins, and sheepskins from Sudan and India, except those that are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist, as regulated articles in § 319.75-2(a)(3). However, it is possible that untreated goatskins, lambskins, and sheepskins may be imported into the United States from other countries where khapra beetle is found. Therefore, we are amending the regulations to restrict these host materials from all countries where the Administrator has determined khapra beetle is present. We are also redesignating § 319.75-2(a)(3) as § 319.75-2(a)(2).

Currently, whole chilies (Capsicum spp.), whole red peppers (Capsicum spp.), and cumin seeds (Cuminum cyminum) in new jute or burlap bags from Pakistan are listed as regulated articles in § 319.75-2(a)(8). Because these commodities may be shipped in other khapra beetle host material and from other countries that are infested with khapra beetle, we are amending the

regulations to specify that the importation of whole chilies, whole red peppers, and cumin seeds is restricted from all countries infested with khapra beetle when packed in new jute or burlap bagging. We are also redesignating § 319.75-2(a)(8) as § 319.75-2(a)(6).

Miscellaneous

The regulations in paragraphs (a)(5) through (a)(7) of § 319.75-2 currently restrict the importation of used jute or burlap bagging not containing cargo, used jute or burlap bagging that contains cargo and the cargo in such bagging, and used jute or burlap bagging used as packing material and the cargo for which the jute and burlap bagging is used as packing material, from countries where khapra beetle is known to occur. As we consider packing material to include wrapping, we do not believe that it is necessary to maintain a separate entry for bags used to contain cargo. Therefore, we are removing current paragraph (a)(6).

Because the regulations were last revised prior to the transfer of port inspection duties to Customs and Border Protection, we are also revising the definition of inspector provided in § 319.75-1. We are revising the definition to match the definition of inspector provided in the fruits and vegetables regulations in § 319.56-2.

We are also revising footnote 1 in § 319.75-2 to remove the second sentence, which specifically references the entry status of fresh whole chilies and fresh whole peppers from Pakistan under our fruits and vegetables regulations as an example of other restrictions that may apply to articles restricted under the khapra beetle regulations. Instead, we will simply reference the fruits and vegetables regulations and the foreign cotton and covers regulations as examples. Doing so will also allow us to remove footnote 3, which provides the same information.

Finally, we are revising § 319.75-4 to correct a wording redundancy and to make the requirements of that section easier to understand.

Immediate Action

Immediate action is necessary to prevent the introduction of khapra beetle into the United States on additional host materials and from additional countries. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

Current regulations restrict the entry of certain articles known to host the khapra beetle, a destructive pest of grain products and seeds. The interim rule will codify requirements of existing Federal Orders by adding commercial shipments of rice, chick pea, safflower seed, and soybean to the list of regulated articles requiring a phytosanitary certificate, and by prohibiting their importation in passenger baggage and personal effects. The amended regulations will

broaden regulations on the importation of khapra beetle host material, such as jute or burlap bags, to all areas where khapra beetle has been detected. The interim rule will also add certain countries to the list of areas where khapra beetle is known to exist and move the list to the PPQ Web site, where it will be easier to make timely amendments.

The U.S. entities that may be impacted by the rule are likely to be those involved in importing, handling, moving, processing, or selling regulated articles. The 2012 County Business Patterns (North American Industry Classification System) statistics corresponding to the Small Business Administration small-entity standards indicate that between 93 and 100 percent of these entities can be considered small. However, impacts of the rule are expected to be limited; the khapra beetle regulations on rice imports have been in place since July 2011, and on chick pea, safflower seed, and soybean imports since December 2011. None of the newly regulated areas (Kuwait, Oman, Qatar, the United Arab Emirates, and South Sudan, and the Palestinian Authority - West Bank) is an important source for the United States of major commodities known to host khapra beetle.

Based on the information we have, there is no reason to conclude that this interim rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a;
7 CFR 2.22, 2.80, and 371.3.

2. In § 319.75-1, the definition of inspector is revised to read as follows:

§ 319.75-1 Definitions.

* * * * *

Inspector. Any individual authorized by the Administrator or the Commissioner of U.S. Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

* * * * *

3. Section 319.75-2 is revised to read as follows:

§ 319.75-2 Regulated articles.¹

(a) The following articles are regulated articles from all countries designated in accordance with paragraph (c) of this section as infested with khapra beetle and are subject to mandatory treatment in accordance with § 319.75-4:

(1) Seeds of the plant family Cucurbitaceae² if in shipments greater than 2 ounces, if not for propagation;

(2) Goatskins, lambskins, and sheepskins (excluding goatskins, lambskins, and sheepskins which are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist);

(3) Plant gums and seeds shipped as bulk cargo (in an unpackaged state);

(4) Used jute or burlap bagging not containing cargo;

(5) Used jute or burlap bagging that is used as a packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material; and

(6) Whole chilies (Capsicum spp.), whole red peppers (Capsicum spp.), and cumin seeds (Cuminum cyminum) when packed in new jute or burlap bagging;

(b) The following articles are regulated articles from all countries designated in accordance with paragraph (c) of this section as infested with khapra beetle or that have the potential to be infested with khapra beetle and must be accompanied by a phytosanitary certificate issued in

¹ The importation of regulated articles may be subject to prohibitions or additional restrictions under other provisions of 7 CFR part 319, such as Subpart—Foreign Cotton and Covers (see § 319.8) and Subpart—Fruits and Vegetables (see § 319.56).

² Seeds of the plant family Cucurbitaceae include but are not limited to: Benincasa hispida (wax gourd), Citrullus Lanatus (watermelon), Cucumis melon (muskmelon, cantaloupe, honeydew), Cumumis sativus (cucumber), Cucurbita pepo (pumpkin, squashes, vegetable marrow), Lagenaria siceraria (calabash, gourd), Luffa cylindrica (dishcloth gourd), Mormoridica charantia (bitter melon), and Sechium edule (chayote).

accordance with § 319.75-9 and containing an additional declaration stating: “The shipment was inspected and found free of khapra beetle (Trogoderma granarium).”

(1) Rice (Oryza sativa); and

(2) Chick peas (Cicer spp.), safflower seeds (Carthamus tinctorius), and soybeans (Glycine max).

(c) The Administrator will designate a country or an area under a specific jurisdictional authority as infested with khapra beetle when we receive official notification from the country or area that it is infested or when we intercept the pest in a commercial shipment from that country. The Administrator will publish the list of countries or areas under a specific jurisdictional authority found to be infested with khapra beetle on the Plant Protection and Quarantine Web site, http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/kb.pdf. After a change is made to the list of infested countries or areas, we will publish a notice in the Federal Register informing the public that the change has occurred.

4. Section 319.75-4 is revised to read as follows:

§ 319.75-4 Treatments.

Prior to moving into the United States from the port of entry, a regulated article listed in § 319.75-2(a) shall be treated for possible infestation with khapra beetle in accordance with part 305 of this chapter.

Done in Washington, DC, this 18th day of December 2014 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

